

APR 30 1984

ALEXANDER L. STEVAS,

CLERK

No. 83-1237

**In the Supreme Court
OF THE
United States**

OCTOBER TERM, 1983

FRANCISCO SANCHEZ-MARTINEZ,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Francisco Sanchez-Martinez,
Petitioner.

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ARGUMENT

Respondent's characterization of the court of appeals' opinion is contrived. There is nothing ambiguous about the opinion. The sole issue on appeal was the proper standard of appellate review from the district court's determination of citizenship. 714 F.2d at 73-74. The court of appeals expressly rejected the "independent determination" standard of review, and applied a "clearly erroneous" standard of review. 714 F.2d at 74. It is more than "tolerably clear" that the court of appeals broke new ground and built a separate rule of law for citizens by birth as opposed to citizens by naturalization.

Respondent suggests that this Court's cases require an appellate court to apply the "clearly erroneous" standard of review to historic facts and, then, determine if these historic facts are sufficient to support the district court's conclusions on citizenship. According to Respondent, the historic facts are to be viewed in the light most favorable to the government. *But see Schneiderman v. United States*, 320 U.S. 118, 122 (1943) ("we believe the facts and law should be construed as far as is reasonably possible in favor of the citizen"). This standard is simply a formulation of the "clearly erroneous" standard of review. It calls for affirmance of a citizenship case if there is some evidentiary support in the record. Whatever Respondent calls this standard of review, it does not require the court of appeals to exercise an independent judgment on the constitutional fact of citizenship. In *Baumgartner v. United States*, 322 U.S. 665 (1944), this Court rejected the test proposed by the Respondent and stated:

Suffice it to say that emphasis on the importance of "clear, unequivocal, and convincing proof" . . . on which to rest the cancellation of a certificate of naturalization would be lost if the ascertainment by the lower courts whether that exacting standard of proof had been satisfied on the whole record were to be deemed a "fact" of the same order as all other "facts," not open to review here.

Id. at 671.

Finally, Respondent suggests that the district court's "fact-bound determination" is clearly correct. Of course, it is whether such an independent review of the whole record should be made which is at issue in this case. The court of appeals did not conduct one in this case and will not conduct one in future citizenship cases involving citizenship by birth. If an independent review is required, then the Court can remand to the court of appeals for this purpose or review the record itself. Petitioner submits that after a review of the whole record the Court "cannot escape the conviction that the case made out by the government lacks that solidity of proof which leaves no troubling doubt in deciding a question of such gravity as is implied in an attempt to reduce a person to the status of alien from that of a citizen." *Id.* at 670.

CONCLUSION

In sum, Petitioner submits that three conclusions emerge with clarity from the briefs filed in connection with this petition. First, the court below has embraced an approach to the review of citizenship questions that is inconsistent with the decisions of this Court. Second, the subject matter raises important questions worthy of this Court's attention — questions of constitutional significance not only for this Petitioner but also for a large but undeterminable number of other "undocumented" native-born citizens. Third, the record in this case provides a peculiarly appropriate vehicle for the resolution of these questions. The case was fully litigated below, and the record amply identifies the factual issues that require close appellate examination. For these reasons, Francisco Sanchez-Martinez petitions this Court to undertake a review on the merits.

DATED this 27th day of April, 1984.

MARTORI, MEYER, HENDRICKS
& VICTOR

A Professional Association

By _____

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AFFIDAVIT OF SERVICE

COLIN F. CAMPBELL, being first duly sworn upon his oath, deposes and says:

That in accordance with Rule 28.2, Supreme Court Rules, he mailed forty copies of the following documents for filing to the Clerk, Supreme Court of the United States, Washington, D.C. 20543 on the 27th day of April, 1984; and three copies each to Rex Lee, Solicitor General, Department of Justice, Washington, D.C. 20530; Elizabeth Jucius Dunn, Assistant United States Attorney, 4000 United States Courthouse, 230 North First Avenue, Phoenix, Arizona 85025; Steve Bomse, Heller, Ehrman, White & McAuliffe, 44 Montgomery Street, San Francisco, California 94104; and Morris J. Baller, Mexican American Legal Defense and Educational Fund, 28 Geary Street, San Francisco, California 94108:

- (a) Reply Brief in Support of Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit;
- (b) Affidavit of Service.

MARTORI, MEYER, HENDRICKS & VICTOR
A Professional Association

By _____

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SUBSCRIBED AND SWORN to before me this 27th day
of April, 1984, by Colin F. Campbell.

Notary Public

My Commission Expires:
